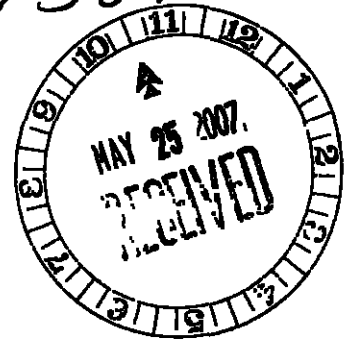


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24 May 2007

Hon. Vernon Williams  
Secretary  
Surface Transportation Board  
395 E Street, S.W.  
Washington, D.C. 20024

Chillicothe-Brunswick Rail Maintenance )  
Authority -- Discontinuance Exemption -- ) AB 1001X  
-- Livingston, Linn and Chariton )  
Counties, Missouri )

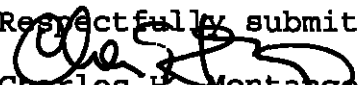
Opposition to Motion to Strike and for Sanctions

Statement concerning § 1152.29(e)(2) Notice

Dear Secretary Williams:

Enclosed please find Chillicothe-Brunswick Rail Maintenance Authority's (CBRMA's) opposition to the "motion to strike" and "motion for sanctions" filed by Vandalia Railroad (VR). VR's strike and sanction request is predicated on the notion that it was "inappropriate" for CBRMA to note that VR is a subsidiary of Pioneer Railcorp. That argument is specious for the reasons stated in the attached pleading. VR's "motion" in the end is nothing more than an illegitimate reply to a reply, the second such violation of 49 C.F.R. § 1114.13(c) by VR in a row.

CBRMA is authorized to state that City of Chillicothe and Motive Rail join in this opposition.

Respectfully submitted,  
  
Charles H. Montange  
for CBRMA

Encls.

cc. Counsel (w/encl.)

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Public Record

BEFORE THE SURFACE TRANSPORTATION BOARD

Chillicothe-Brunswick Rail Maintenance )  
Authority -- Discontinuance Exemption -- ) AB 1001X  
Livingston, Linn and Chariton Counties, MO )

Response to Motion to Strike  
and Motion for Sanctions  
and  
Statement Concerning § 1152.29(e)(2)  
Notice of Consummation

I. VR's Latest Motion Must Be Rejected

Vandalia Railroad (VR) on May 23, 2006, filed yet another unlawful reply to a reply,<sup>1</sup> this time in the form of a "motion" to "strike" and for "sanctions" against Chillicothe-Brunswick Railroad Maintenance Authority (CBRMA). The VR motion is a confused thing, the first sentence of which on its face appears to ask that VR's own motion be stricken (CBRMA believes that would be a good idea). But judging from the rest of the pleading, VR's first sentence seems to be an error as an expression of VR's intent. The rest of VR's pleading represents itself as directed at CBRMA's reply to an earlier VR motion to compel.

The gravamen of VR's argument to strike and for sanctions is that CBRMA ostensibly engaged in "inappropriate conduct" when CBRMA pointed out that VR is a subsidiary of Pioneer. This Board only recently re-affirmed in Central Illinois RR Co.-- Discontinuance of Service Exemption -- in Peoria County, IL, AB-1066X, served Nov. 21, 2005 (CIRY), that purchase OFA's are not

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<sup>1</sup> 49 C.F.R. § 1114.13(c) bars VR's pleading and it should be stricken.

permitted in discontinuance proceedings. Since CIRY involved another Pioneer subsidiary (represented by the same lawyer as here), it is definitely not only appropriate but also fundamentally ethical advocacy to make the linkage. It shows that VR is not guilty of a sloppy but perhaps unintentional blunder, but instead is knowingly seeking relief this Board has said is unavailable. In such circumstances, if any party should be sanctioned for inappropriate conduct, it is VR, for intentionally wasting this Board's resources as well as that of the other parties.

VR's complaint that CBRMA has pointed out that VR is a subsidiary of Pioneer is directed not so much at CBRMA's reply, as it is at CBRMA's cover letter (which VR does not move to strike). In the cover letter, CBRMA put Pioneer Railcorp on notice that City and CBRMA were aware of a settlement agreement between City's predecessor in interest (City is a beneficiary of that agreement) and Pioneer Railcorp barring Pioneer from asserting claims concerning "this rail line" (VR's term) in any forum. City and CBRMA reserved their right to pursue breach of contract claims against Pioneer and VR in the event the settlement agreement were violated by their claims asserted in this forum. It is hardly inappropriate to advise the Pioneer and VR management that City of Chillicothe and CBRMA will view VR's conduct as a breach if it causes damages.

The remainder of the VR pleading is obvious and illegitimate reply to a reply barred by 49 C.F.R. § 1114.13(c).

In the course of effectively reaffirming that it wants to do a purchase OFA if it does anything at all, VR erroneously claims that this Board's recent determination in CIRY that the purchase OFA approach does not apply in the context of discontinuances (as in this proceeding) is not precedential. VR basically says it wishes to reargue the point, failing yet again to offer even a suggestion of what more it has to say. VR's reply to reply in the end is thus not even argument; it is hand-waving combined with smoke-blowing. It is waste upon waste.

We will not reply to VR's ad hominem attacks on CBRMA's counsel, other than to deny the allegations. VR should focus on delivering a meaningful message, not trying to shoot the other side's messenger. Moreover, VR's motion here at issue demonstrates CBRMA's original point that Pioneer Railcorp subsidiaries engage in what amounts to abusive motions practice. Accord, Redwood v. Dobson, 476 F.3d 462, 471 (7th Cir. 2007):

"Motions to strike sentences or sections out of briefs waste everyone's time. ... Motions to strike words, sentences, or sections out of briefs serve no purpose but to aggravate the opponent -- and although that may have been the goal here, this goal is not one the judicial system will help any litigant achieve. Motions to strike disserve the interest of judicial economy. The aggravation comes at an unacceptable cost in judicial time."

In the end, all that VR's pleading demonstrates is that if there are sanctions and strikes, VR obviously should be the party sanctioned and stricken. Enough is enough.

## II. Section 1152.29(e)(2)

Contrary to the claim by Vandalia at page 3 of its Motion,<sup>2</sup> there is no state court temporary restraining order currently barring City of Chillicothe from selling "this rail line" (Vandalia's words), nor is there a proceeding currently pending against City of Chillicothe relating to such a sale.<sup>3</sup> City of Chillicothe has authorized CBRMA to state that City has closed a sale of the portion of the property from MP 218.5 to terminus at Brunswick, preserving a right to re-acquire whatever portions are authorized for railbanking pursuant to 16 U.S.C. § 1247(d), from MP 218.5 to MP 187.7 (near Brunswick). City's action is thus consistent with railbanking, and City reaffirms its desire to railbank the portion from MP 218.5 to MP 187.7 if so permitted by this Board. CBRMA continues to be willing to negotiate an interim trails agreement. City continues to own, and Motive Rail continues to operate upon, all the remaining portion of "this rail line" from MP 226 to MP 218.5.

Under 49 C.F.R. § 1152.29(e)(2), a railroad which obtains abandonment authorization must file a notice exercising that authority within one year of receipt of such authority. CBRMA does not understand this provision to require notification of exercise of discontinuance authority, such as that obtained by

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<sup>2</sup> Vandalia evidently intended to argue that because there was a state court temporary restraining order barring City from selling "this rail line" (Vandalia's words), allowing Vandalia to belatedly litigate an irrelevant OFA would not be contrary to National Rail Transportation policy favoring expeditious proceedings.

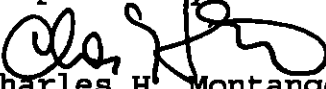
<sup>3</sup> Mr. Rupp, who opposes the Vandalia OFA effort here, brought such a proceeding, but it was dismissed.

CBRMA in this case. However, as indicated in prior pleadings and upon review of all applicable regulations and orders, there are no legal barriers to consummation of discontinuance authority at this time. Except insofar as necessary to preserve jurisdiction to railbank however much of the line is wished by City of Chillicothe pursuant to 16 U.S.C. § 1247(d), CBRMA formally notes that it has exercised (consummated) discontinuance authority in the form of having previously ceased all service, cancelled tariffs, and so forth as to the entirety of the line [MP 226 (in Chillicothe) to Milepost 188.56 (Kelly, near Brunswick), a distance of approximately 37.44 miles in Livingston, Linn and Chariton Counties, MO].

Conclusion

The latest pleading filed by Vandalia is another illegitimate reply to reply and must be disregarded. In any event, it sets out no basis for any relief, and any relief it seeks is now effectively moot.

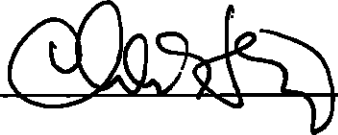
Respectfully submitted,

  
Charles H. Montange  
426 NW 162d St.  
Seattle, WA 98177  
(206) 546-1936  
Counsel for CBRMA

cc. Chillicothe-Brunswick Rail Maintenance Authority  
Att: Mr. Robert Cowherd  
Chapman, Cowherd, Turner & Tschannen  
P.O. Box 228  
Chillicothe, MO 64601  
  
City of Chillicothe

Certificate of Service

I certify service by express service, next business day deliver, this 24th day of May 2007 upon Mr. LaKemper (Vandalia), 1318 S. Johanson Road, Peoria, IL 61607 and Mr. Kahn (Rupp, et al.), 1920 N Street, N.W., 8th Fl., Washington, D.C. 20036-1601.

A handwritten signature in black ink, appearing to be "C. LaKemper", is written over a horizontal line.